

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 156 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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FIZAT M JANGBARWALA - DECD. THRO'HEIRS &L.R. SAMUNBHAI &6

Versus

MOHMADBHAI I CHASHMAI -DECD. THRO'HEIRS &L.R. HUSSANIBHAI&4

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Appearance:

MR GIRISH D BHATT for Petitioners

RULE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/08/98

ORAL JUDGEMENT

This revision under section 115 of the Code of Civil Procedure is directed against an order dated 12.11.1997 of the Judge, Small Causes Court, Surat rejecting the application of the plaintiffs-revisionists seeking certain amendments in the plaint. The respondents are served but they have not engaged any

Counsel nor they are present. As such learned Counsel for the revisionists was heard.

Brief facts are that the suit for eviction of the respondent was filed by deceased plaintiff on the ground that the premises in tenancy of the respondent was required by the landlady for personal use and also for use of family members of the landlady. These needs were tried to be clarified through an application seeking amendment in the plaint. The said application was resisted and the Trial Court rejected the amendment application observing that the need of the deceased landlady after her death extinguished and that nothing survived in section 13(1)(g) of the Bombay Rent Act. After hearing learned Counsel for the revisionists and examining the impugned order I am satisfied that the impugned order suffers from jurisdictional error. While deciding the amendment application the Trial Court should have kept in mind whether proposed amendment is malafide or bonafide and whether the proposed amendment introduces altogether new cause of action or changes nature of the suit. It should have also considered whether the plaintiff wanted to resile from any previous admission in the plaint. On these points, there is no observation of the Trial Judge. On the other hand, the Trial Judge has prejudged the issue whether section 13(1)(g) of the Bombay Rent Act is applicable or not. Merits of the case are not to be touched and decided while deciding the amendment application. Ofcourse if the amendment application would have been time barred then certainly it could be rejected on the ground of limitation.

The Trial Court has also committed jurisdictional error in overlooking the fact that the suit was not only for eviction on grounds of reasonable and bonafide requirement of the landlady. In the plaint it was specifically averred that the family members in the family of the landlady has increased and for this reason the premises was required reasonably and bonafide for personal use of the landlady and her family members. If certain facts were proposed to be clarified through amendment application it could not be said that the nature of the suit was changed or that the plaintiff wanted to resile from previous admission. The proposed amendment can not be said to be malafide. It was essential for effective adjudication of the controversy involved in the rent suit. Prejudging main issue was not at all required at the initial stage when amendment application was proposed to be decided by the Trial Court. Such decision has certainly prejudiced the case of the plaintiffs-revisionists. The impugned order

therefore is specimen which suffers from jurisdictional error and it is also a specimen of improper exercise of jurisdiction by the Court below. The revision therefore, succeeds and is allowed. The impugned order is set aside and the application of the landlady for amendment of the plaint is allowed.

Sd/-

(D.C.Srivastava,J)

m.m.bhatt